as principal, and not for the debt of another. So defendant was held liable on his promise without writing.

In addition to the above, it has been held in some cases that where the promise to pay the debt of another arises out of some new and original consideration, it is not within the Statute of Frauds. See Smith on Contracts (7th ed.) 112; *Hopkins v. Richardson*, 9 Gratt. 494; *Wright v. Smith*, 81 Va. 777. For an examination of this doctrine, see Harriman on Contracts, p. 197, where various distinctions are suggested. The doctrine is repudiated in England. And see *Noyes v. Humphries*, 11 Gratt. 636, at p. 645, per Allen, P.

EMBLEMENTS IN VIRGINIA.—When the owner of land dies intestate, and it descends to the heir, a distinction is made between such unsevered vegetable products as are raised annually by cultivation and labor (*fructus industriales*), and such as are the natural products of the ground (*fructus naturales*). The former class, called *emblements*, are considered personalty, and pass to the administrator, while the latter class, those not emblements, are regarded as part of the realty, and go with the land to the heir. Emblements may be defined as the annual results of agricultural labor, *i. e.*, the crops which repay the labor bestowed upon them within the year, and they belong to the administrator, because the personal estate is expended in their production, and should therefore be increased by their value. Accordingly, crops of corn, wheat, and other cereals, potatoes and other root crops, cotton, hemp, flax, etc., are emblements, and go to the administrator; while timber, fruit-trees, fruit, grass, clover, etc., are not emblements, and pass to the heir. (3 Redf. Wills, 150–155; 4 Lead. Cases, Real Prop. 517; Tied. Real Prop., sec. 71, note 4.

When, however, land is devised, the devisee is entitled, at common law, to all unsevered vegetable products thereon; those which are emblements as well as those which are not, the devise of the land importing a gift of all that is affixed to it, no distinction being made between timber, fruit, and grass, on the one hand, and wheat, corn, tobacco, etc., on the other. *West v. Moore*, 8 East, 339; *Bradner v. Faulkner*, 34 N. Y. 347; *Dennet v. Hopkinson*, 63 Me. 350 (18 Am. Rep. 227); 1 Lomax Ex'ors, 410; 3 Redfield, Wills, 154.

As to the right in Virginia of a devisee to the emblements, it was held, in *Shelton v. Shelton*, 1 Wash. (Va. 53), that under the statute then in force a devise of land, where the testator died after March 1, would not pass to the devisee the crops unsevered at the testator's death, unless such *intent* was manifested by the will. But see *Fleming v. Bolling*, 3 Call, 75, 82, explaining *Shelton v. Shelton* as a case under the statute, and admitting the common law to have been otherwise. And see 1 Lom. Ex. 421, as to the effect of the Code of 1849, ch. 139, sec. 2. But however the law may have been formerly, it is believed that now in Virginia a devise of land will carry the emblements to the devisee, unless a contrary intention is expressed in the will. For the Code of 1887, sec. 2806, declares that "in all cases the right to emblements shall be as at common law;" and by the common law a devise of land to A gave him the emblements. And see *Bradner v. Faulkner*, 34 N. Y. 347, which is *e contra* to *Shelton v. Shelton* on the construction of a very similar statute.

As to the right of *tenant for life* to emblements, see 2 Bl. Com. (122). When

the tenant holds for a *certain number of years*, the doctrine at common law is that he is not entitled to emblements; "for the tenant knew the expiration of his term, and therefore it was his own folly to sow what he could never reap the profits of." 2 Bl. Com. (145). In England, however, the tenant for a term certain may be entitled, as emblements, to the crops sown before his lease expires (called the waygowing crops), by the particular custom of the district where the land is situated. See *Wigglesworth v. Dallison*, 1 Doug. 201. But no particular custom of this kind can exist in Virginia; and in *Harris v. Carson*, 7 Leigh, 630, it is held: (1) that at common law where land is leased for a fixed and determinate period, the offgoing tenant is not entitled to the waygoing crop; (2) that parol evidence of a usage for the offgoing tenant to have the waygoing crop is not admissible to explain a written contract of lease for a fixed and certain period; and (3) that a practice or usage in opposition to the common law, however general it may be, has no force in Virginia on the ground of custom, because *not immemorial*. But in other States the offgoing tenant has been allowed the waygoing crop on the ground of particular custom; immemoriality not being so strictly insisted on as to make such a custom impossible in America. See *Stultz v. Dickey*, 5 Binn. (Pa.) 285 (6 Am. Dec. 411); *Daniel v. Brown*, 134 N. H. 505 (69 Am. Dec. 515 and note). A tenant at will is entitled to emblements when the tenancy is determined by the landlord. 2 Bl. Com. (146). But a tenant by sufferance is said not to be entitled to emblements. *Doe v. Turner*, 7 M. & W. 226; 1 Washb. R. P. (103).

As we have seen, the Code of 1887, sec. 2806, now declares that "in all cases the right to emblements shall be as at common law;" thus repealing the troublesome statutes by which the right was formerly regulated. But sec. 2807 of the Code enacts that "The tenant who is entitled to emblements, or his personal representative, shall pay a reasonable rent for so much land as the emblements shall occupy, in the same proportion as it shall bear in quantity and value to the entire premises; and such rent shall be apportioned among the owners of the reversion, if there be more than one, according to their respective interests." And sec. 2808 enacts: "If any land has been prepared by the tenant previous to the expiration of the lease, for the purpose of putting a crop into the ground, under such circumstances as would have entitled the tenant, or his personal representative, to emblements, if the crop had been put in, those who succeed to the land shall pay a reasonable compensation for such preparation." Whether the tenant shall pay rent for the premises occupied by the emblements is doubtful at common law; sec. 2807 settles it in favor of the landlord. And at common law the mere preparation of the soil for crops will give the tenant no right to emblements, if they have not been actually planted when his estate terminates; sec. 2808 allows reasonable compensation to the tenant in this case.

RIGHT OF INFANTS TO AVOID CONTRACTS—FRAUDULENT REPRESENTATION OF AGE.—(1) *Action on the Contract.*—The rule seems to be pretty well settled that an infant's right to avoid a contract made by him is not impaired by the fact that he has made false representations as to his age at the time of entering into the agreement. This doctrine has been recently reaffirmed in the late case of *Alt v. Groff* (Minn.), 68 N. W. Rep. 9. There has been a good deal of interesting discussion on the question of the effect of fraudulent misrepresentations as to age made by minors, and the decisions are not altogether harmonious.